

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

STEVE ALAN MAHONEY,

Plaintiff,

v.

KITSAP COUNTY JAIL, et al.,

Defendants.

No. C10-5140 RBL/KLS

ORDER DENYING MOTION FOR THE  
APPOINTMENT OF COUNSEL

This civil rights action has been referred to United States Magistrate Judge Karen L. Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Before the Court is Plaintiff's motion for appointment of counsel. Dkt. 6. Having carefully reviewed Plaintiff's motion, and balance of the record, the Court finds, for the reasons stated below, that Plaintiff's motion should be denied.

*DISCUSSION*

No constitutional right exists to appointed counsel in a § 1983 action. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). *See also United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th Cir. 1995) ("[a]ppointment of counsel under this section is discretionary, not mandatory"). However, in "exceptional circumstances," a district court may appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1) (formerly 28 U.S.C. § 1915(d)). *Rand v. Roland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *overruled on other grounds*, 154 F.3d 952 (9th Cir. 1998) (emphasis supplied). To decide whether exceptional

1 circumstances exist, the court must evaluate both “the likelihood of success on the merits [and]  
2 the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal  
3 issues involved.” *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (quoting  
4 *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). A plaintiff must plead facts that show he  
5 has an insufficient grasp of his case or the legal issue involved and an inadequate ability to  
6 articulate the factual basis of his claim. *Agyeman v. Corrections Corp. of America*, 390 F.3d  
7 1101, 1103 (9<sup>th</sup> Cir. 2004).

9 That a *pro se* litigant may be better served with the assistance of counsel is not the test.  
10 *Rand*, 113 F.3d at 1525. Moreover, the need for discovery does not necessarily qualify the issues  
11 involved as “complex.” *Wilborn*, 789 F.2d at 1331. Most actions require development of further  
12 facts during litigation. But, if all that was required to establish the complexity of the relevant  
13 issues was a demonstration of the need for development of further facts, then practically all cases  
14 would involve complex legal issues. *Id.*

16 Plaintiff requests that this court appoint an attorney to represent him because he is unable  
17 to afford counsel. Dkt. 6. However, Plaintiff’s claims have been presented in a manner  
18 demonstrating an adequate ability to articulate his claims *pro se*. Plaintiff has not demonstrated  
19 that the issues involved in this case are complex or that he has had any difficulties in expressing  
20 them. There is nothing in the motion for counsel presented to the court to indicate that a finding  
21 of exceptional circumstances is warranted in this case. While Plaintiff may not have vast  
22 resources or legal training, he meets the threshold for a *pro se* litigant. Concerns regarding  
23 investigation and discovery, an absence of legal training and limited access to legal materials are  
24 not exceptional factors, but are the type of difficulties encountered by many *pro se* litigants.  
25  
26

1 There are also numerous avenues of discovery available to the parties through the Federal Rules  
2 of Civil Procedure during the litigation process.

3 In summary, Plaintiff has demonstrated an adequate ability to articulate his claims *pro se*,  
4 has not demonstrated that the issues involved in this case are complex or that he has had any  
5 difficulties in expressing them, nor has he shown that he is likely to succeed on the merits on his  
6 case.

7  
8 Accordingly, Plaintiff's motion to appoint counsel (Dkt. 6) is **DENIED**. The Clerk is  
9 directed to send copies of this Order to Plaintiff.

10  
11 DATED this 21st day of April, 2010.

12  
13   
14 Karen L. Strombom  
15 United States Magistrate Judge  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26